

Message Text

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TO ALL AMERICAN REPUBLIC DIPLOMATIC POSTS PRIORITY

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SUBJ: PANAMA CANAL TREATY: RESERVATIONS AND
- UNDERSTANDINGS

1. TRANSMITTED BELOW IS THE TEXT OF THE RESOLUTION OF
RATIFICATION FOR THE PANAMA CANAL TREATY WHICH WAS AGREED
TO BY THE SENATE ON APRIL 18 BY A VOTE OF 68 TO 32. OF
PARTICULAR IMPORTANCE ARE RESERVATION NO. 1 (THE SO-CALLED
LEADERSHIP RESERVATION), WHICH STATES US ADHERENCE TO THE
PRINCIPLE OF NONINTERVENTION, RESERVATION NO. 4, WHICH
GIVES THE TIME FRAME FOR THE EXCHANGE OF INSTRUMENTS OF
RATIFICATION, AND RESERVATION NO. 5 CONCERNING A SEA-LEVEL
CANAL.

2. BEGIN TEXT:

RESOLVED (TWO-THIRDS OF THE SENATORS PRESENT CONCURRING
THEREIN), THAT THE SENATE ADVISE AND CONSENT TO THE RATI-
FICATION OF THE PANAMA CANAL TREATY, TOGETHER WITH THE
ANNEX AND AGREED MINUTE RELATING THERETO, DONE AT WASHING-
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TON ON SEPTEMBER 7, 1977 (EXECUTIVE N, NINETY-FIFTH
CONGRESS, FIRST SESSION), SUBJECT TO THE FOLLOWING -

(A) RESERVATIONS:

(1) PURSUANT TO ITS ADHERENCE TO THE PRINCIPLE OF NON-
INTERVENTION, ANY ACTION TAKEN BY THE UNITED STATES OF

AMERICA IN THE EXERCISE OF ITS RIGHTS TO ASSURE THAT THE PANAMA CANAL SHALL REMAIN OPEN, NEUTRAL, SECURE, AND ACCESSIBLE, PURSUANT TO THE PROVISIONS OF THIS TREATY AND THE NEUTRALITY TREATY AND THE RESOLUTIONS OF ADVICE AND CONSENT THERETO, SHALL BE ONLY FOR THE PURPOSE OF ASSURING THAT THE CANAL SHALL REMAIN OPEN, NEUTRAL, SECURE, AND ACCESSIBLE, AND SHALL NOT HAVE AS ITS PURPOSE OR BE INTERPRETED AS A RIGHT OF INTERVENTION IN THE INTERNAL AFFAIRS OF THE REPUBLIC OF PANAMA OR INTERFERENCE WITH ITS POLITICAL INDEPENDENCE OR SOVEREIGN INTEGRITY.

(2) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS TREATY, NO FUNDS MAY BE DRAWN FROM THE UNITED STATES TREASURY FOR PAYMENTS UNDER ARTICLE XIII, PARAGRAPH 4, WITHOUT STATUTORY AUTHORIZATION.

(3) ANY ACCUMULATED UNPAID BALANCE UNDER PARAGRAPH 4(C) OF ARTICLE XIII AT THE TERMINATION OF THE TREATY SHALL BE PAYABLE ONLY TO THE EXTENT OF ANY OPERATING SURPLUS IN THE LAST YEAR OF THE TREATY'S DURATION, AND THAT NOTHING IN THAT PARAGRAPH MAY BE CONSTRUED AS OBLIGATING THE UNITED STATES OF AMERICA TO PAY AFTER THE DATE OF THE TERMINATION OF THE TREATY ANY SUCH UNPAID BALANCE WHICH SHALL HAVE ACCRUED BEFORE SUCH DATE.

(4) EXCHANGE OF THE INSTRUMENTS OF RATIFICATION SHALL NOT UNCLASSIFIED

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BE EFFECTIVE EARLIER THAN MARCH 31, 1979, AND THE TREATIES SHALL NOT ENTER INTO FORCE PRIOR TO OCTOBER 1, 1979, UNLESS LEGISLATION NECESSARY TO IMPLEMENT THE PROVISIONS OF THE PANAMA CANAL TREATY SHALL HAVE BEEN ENACTED BY THE CONGRESS OF THE UNITED STATES OF AMERICA BEFORE MARCH 31, 1979.

(5) THE INSTRUMENTS OF RATIFICATION TO BE EXCHANGED BY THE UNITED STATES AND THE REPUBLIC OF PANAMA SHALL EACH INCLUDE PROVISIONS WHEREBY EACH PARTY AGREES TO WAIVE ITS RIGHTS AND RELEASE THE OTHER PARTY FROM ITS OBLIGATIONS UNDER PARAGRAPH 2 OF ARTICLE XII.

(6) AFTER THE DATE OF ENTRY INTO FORCE OF THE TREATY, THE PANAMA CANAL COMMISSION SHALL, UNLESS IT IS OTHERWISE PROVIDED BY LEGISLATION ENACTED BY THE CONGRESS, BE OBLIGATED TO REIMBURSE THE TREASURY OF THE UNITED STATES OF AMERICA, AS NEARLY AS POSSIBLE, FOR THE INTEREST COST OF

THE FUNDS OR OTHER ASSETS DIRECTLY INVESTED IN THE COMMISSION BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND FOR THE INTEREST COST OF THE FUNDS OR OTHER ASSETS

DIRECTLY INVESTED IN THE PREDECESSOR PANAMA CANAL COMPANY BY THE GOVERNMENT AND NOT REIMBURSED BEFORE THE DATE OF ENTRY INTO FORCE OF THE TREATY. SUCH REIMBURSEMENT OF SUCH INTEREST COSTS SHALL BE MADE AT A RATE DETERMINED BY THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA AND AT ANNUAL INTERVALS TO THE EXTENT EARNED, AND IF NOT EARNED, SHALL BE MADE FROM SUBSEQUENT EARNINGS. FOR PURPOSES OF THIS RESERVATION, THE PHRASE "FUNDS OR OTHER ASSETS DIRECTLY INVESTED" SHALL HAVE THE SAME MEANING AS THE PHRASE "NET DIRECT INVESTMENT" HAS UNDER SECTION 62 OF TITLE 2 OF THE CANAL ZONE CODE.

(B) UNDERSTANDINGS:

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(1) NOTHING IN PARAGRAPHS 3, 4 AND 5 OF ARTICLE IV MAY BE CONSTRUED TO LIMIT EITHER THE PROVISIONS OF PARAGRAPH 1 OF ARTICLE IV PROVIDING THAT EACH PARTY SHALL ACT, IN ACCORDANCE WITH ITS CONSTITUTIONAL PROCESSES, TO MEET DANGER THREATENING THE SECURITY OF THE PANAMA CANAL, OR THE PROVISIONS OF PARAGRAPH 2 OF ARTICLE IV PROVIDING THAT THE UNITED STATES OF AMERICA SHALL HAVE PRIMARY RESPONSIBILITY TO PROTECT AND DEFEND THE CANAL FOR THE DURATION OF THE TREATY.

(2) BEFORE THE FIRST DATE OF THE THREE-YEAR PERIOD BEGINNING ON THE DATE OF ENTRY INTO FORCE OF THIS TREATY AND BEFORE EACH THREE-YEAR PERIOD FOLLOWING THEREAFTER, THE TWO PARTIES SHALL AGREE UPON THE SPECIFIC LEVELS AND QUALITY OF SERVICES, AS ARE REFERRED TO IN ARTICLE III, PARAGRAPH 5 OF THE TREATY, TO BE PROVIDED DURING THE FOLLOWING THREE-YEAR PERIOD AND, EXCEPT FOR THE FIRST THREE-YEAR PERIOD, ON THE REIMBURSEMENT TO BE MADE FOR THE COSTS OF SUCH SERVICES, SUCH SERVICES TO BE LIMITED TO SUCH AS ARE ESSENTIAL TO THE EFFECTIVE FUNCTIONING OF SUCH CANAL OPERATING AREAS AND SUCH HOUSING AREAS REFERRED TO IN ARTICLE III, PARAGRAPH 5 OF THE TREATY. IF PAYMENTS MADE UNDER ARTICLE III, PARAGRAPH 5 OF THE TREATY FOR THE PRECEDING THREE-YEAR PERIOD, INCLUDING THE INITIAL THREE-YEAR PERIOD, EXCEED OR ARE LESS THAN THE ACTUAL COSTS TO THE REPUBLIC OF PANAMA FOR SUPPLYING, DURING SUCH PERIOD, THE SPECIFIC LEVELS AND QUALITY OF SERVICES AGREED UPON, THEN THE COMMISSION SHALL DEDUCT FROM OR ADD TO THE PAYMENT

REQUIRED TO BE MADE TO THE REPUBLIC OF PANAMA FOR EACH OF THE FOLLOWING THREE YEARS ONE-THIRD OF SUCH EXCESS OR DEFICIT, AS THE CASE MAY BE.- THERE SHALL BE AN INDEPENDENT AND BINDING AUDIT, CONDUCTED BY AN AUDITOR MUTUALLY
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SELECTED BY BOTH PARTIES, OF ANY COSTS OF SERVICES DISPUTED BY THE TWO PARTIES PURSUANT TO THE REEXAMINATION OF SUCH COSTS PROVIDED FOR IN THIS UNDERSTANDING.

(3) NOTHING IN PARAGRAPH 4(C) OF ARTICLE XIII SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE UNITED STATES OF AMERICA THROUGH THE UNITED STATES GOVERNMENT AGENCY CALLED THE PANAMA CANAL COMMISSION TO MAKE SUCH FINANCIAL DECISIONS AND INCUR SUCH EXPENSES AS ARE REASONABLE AND NECESSARY FOR THE MANAGEMENT, OPERATION, AND MAINTENANCE OF THE PANAMA CANAL. IN ADDITION, TOLL RATES ESTABLISHED PURSUANT TO PARAGRAPH 2(D) OF ARTICLE III NEED NOT BE SET AT LEVELS DESIGNED TO PRODUCE REVENUES TO COVER THE PAYMENT TO PANAMA DESCRIBED IN PARAGRAPH 4(C) OF ARTICLE XIII.

(4) ANY AGREEMENT CONCLUDED PURSUANT TO ARTICLE IX, PARAGRAPH 11 WITH RESPECT TO THE TRANSFER OF PRISONERS SHALL BE CONCLUDED IN ACCORDANCE WITH THE CONSTITUTIONAL PROCESSES OF BOTH PARTIES.

(5) NOTHING IN THE TREATY, IN THE ANNEX OR AGREED MINUTE RELATING TO THE TREATY, OR IN ANY OTHER AGREEMENT RELATING TO THE TREATY OBLIGATES THE UNITED STATES TO PROVIDE ANY ECONOMIC ASSISTANCE, MILITARY GRANT ASSISTANCE, SECURITY SUPPORTING ASSISTANCE, FOREIGN MILITARY SALES CREDITS, OR INTERNATIONAL MILITARY EDUCATION AND TRAINING TO THE REPUBLIC OF PANAMA.

(6) THE PRESIDENT SHALL INCLUDE ALL RESERVATIONS AND UNDERSTANDINGS INCORPORATED BY THE SENATE IN THIS RESOLUTION OF RATIFICATION IN THE INSTRUMENT OF RATIFICATION EXCHANGED WITH THE GOVERNMENT OF THE REPUBLIC OF PANAMA. END TEXT.

3. POSTS MAY MAKE THE TEXT OF THE RESOLUTION OF RATIFICATION AVAILABLE TO HOST GOVERNMENTS. NO SPECIFIC ACTION
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IS REQUESTED AT THIS TIME. CHRISTOPHER

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